

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JAMES SHARPLESS, an individual; and)
SUSAN SHARPLESS, an individual,)
Plaintiffs) Case No.: 2:16-cv-00768-GMN-CWH

ORDER

7 GEICO GENERAL INSURANCE)
8 COMPANY, a Maryland Corporation, a)
9 GOVERNMENT EMPLOYEES)
10 INSURANCE COMPANY, dba GEICO;)
11 DOES I through inclusive; and ROE)
12 CORPORATIONS XI through XX, inclusive,)
13
14 Defendants.)
15)

Pending before the Court is a Motion to Remand to State Court, (ECF No. 9), filed by Plaintiffs James Sharpless and Susan Sharpless (“Plaintiffs”). Defendant Geico General Insurance Company (“Defendant”) filed a Response, (ECF No. 11), and Plaintiffs filed a Reply, (ECF No. 13). For the reasons discussed below, Plaintiffs’ Motion to Remand is GRANTED.¹

I. BACKGROUND

Plaintiffs originally filed their Complaint, (Pet. for Removal Ex. A (“Compl.”), ¶¶ 8–15, ECF No. 1), in state court alleging breach of contract, breach of the implied covenant of good faith and fair dealing, unfair trade practices, and loss of consortium. (Compl. ¶¶ 30–50). Plaintiffs served the Complaint and Summons on “Defendants’ registered agent as listed on the Nevada Secretary of State’s website” on March 7, 2016. (Mot. to Remand 4:10–11, ECF No. 9). When Defendant did not answer within the twenty days required by Nevada law, Plaintiffs

¹ Also pending before the Court is a Motion to Set Aside Default, (ECF No. 12), filed by Defendant. Because the Court grants Plaintiffs' Motion to Remand, (ECF No. 9), Defendant's Motion to Set Aside Default is hereby DENIED as moot.

1 filed for default against Defendant, which the Eighth Judicial District Court Clerk signed and
2 entered on April 5, 2016. (*Id.* 4:13–16).

3 On April 6, 2016, Defendant removed the action, citing the Court’s diversity jurisdiction
4 pursuant to 28 U.S.C. § 1332. (Compl. ¶¶ 1–2, 29). Specifically, Plaintiffs allege that they are
5 citizens of Nevada, Defendant is a foreign entity, and the amount in controversy exceeds
6 \$75,000. (*Id.*). On May 3, 2016, Plaintiffs filed the instant Motion to Remand, (ECF No. 9).

7 **II. LEGAL STANDARD**

8 Federal courts are courts of limited jurisdiction, possessing only those powers granted by
9 the Constitution and by statute. *See United States v. Marks*, 530 F.3d 799, 810 (9th Cir. 2008).
10 For this reason, “[i]f at any time before final judgment it appears that the district court lacks
11 subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

12 A defendant may remove an action to federal court only if the district court has original
13 jurisdiction over the matter. 28 U.S.C. § 1441(a). “Removal statutes are to be ‘strictly
14 construed’ against removal jurisdiction.” *Nevada v. Bank of Am. Corp.*, 672 F.3d 661, 667 (9th
15 Cir. 2012) (quoting *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002)). The party
16 asserting federal jurisdiction bears the burden of overcoming the presumption against federal
17 jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Specifically,
18 federal courts must reject federal jurisdiction “if there is any doubt as to the right of removal in
19 the first instance.” *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992) (quoting *Libhart v. Santa
20 Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)); *see also Matheson v. Progressive
21 Specialty Ins. Co.*, 319 F.3d 1089, 1090–91 (9th Cir. 2003) (per curiam) (noting that “[w]here it
22 is not facially evident from the complaint that more than \$75,000 is in controversy, the
23 removing party must prove, by a preponderance of the evidence, that the amount in controversy
24 meets the jurisdictional threshold”).

1 District courts have subject matter jurisdiction in two instances. First, district courts
2 have subject matter jurisdiction over civil actions that arise under federal law. 28 U.S.C. §
3 1331. Second, district courts have subject matter jurisdiction over civil actions where no
4 plaintiff is a citizen of the same state as a defendant and the amount in controversy exceeds
5 \$75,000. 28 U.S.C. § 1332(a).

6 **III. DISCUSSION**

7 Plaintiffs move to remand the case back to state court because “Defendants [sic] let the
8 time expire to file an Answer to the Complaint in state court” and therefore “defaulted before
9 they [sic] filed the Notice of Removal.” (Mot. to Remand 5:4–6, ECF No. 9). Although the
10 state court entered default against Defendant for failure to timely respond to the Complaint,
11 (see Reply 4:6–11, ECF No. 13), Defendant argues that removal is nevertheless proper because
12 Plaintiff’s defective attempt to serve Defendant failed to trigger the removal period, (Resp. to
13 Mot. to Remand 5:13–21, ECF No. 110). Defendant alleges that service was improper because
14 Plaintiffs failed to follow the applicable Nevada Revised Statute §§ 690A.260 and 680A.250,
15 which specifically apply to service of insurers. (*Id.* 2:23–24, 5:14–17). Alternatively,
16 Defendant argues removal occurred within the federal thirty-day timeframe. (*Id.* 6:4–9).

17 Under Nevada Revised Statute §§ 680A.250–260, all insurance firms authorized in
18 Nevada must appoint the state Insurance Commissioner as their “attorney to receive service of
19 legal process” in Nevada. Nev. Rev. Stat. § 680A.250(1). Service of process against a foreign
20 or alien insurer must be made “only by service thereof upon the Commissioner,” while service
21 of a domestic insurer is proper in accordance either with the Nevada Rules of Civil Procedure
22 or with §§ 680A.250–260. *Id.* at (3), (4). Service of process is complete, under § 680A.260(2),
23 when the Commissioner mails to the defendant, by certified mail, a copy of the process. Nev.
24 Rev. Stat. Ann. § 680A.260(2); *Transamerica Ins. Co. v. C.B. Concrete Co.*, 669 P.2d 246, 247
25 (1983); *Pilot Trading Co. v. Hartford Ins. Grp.*, 946 F. Supp. 834, 836 (D. Nev. 1996).

1 Moreover, pursuant to 28 U.S.C. § 1446(b), a notice of removal must be filed “within
2 thirty days after the receipt by the defendant, through service or otherwise, of a copy of the
3 initial pleading setting forth the claim for relief upon which such action or proceeding is
4 based.” 28 U.S.C. § 1446(b). In *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526
5 U.S. 344 (1999), the United States Supreme Court interpreted the thirty-day window outlined in
6 28 U.S.C. § 1446(b) to begin once the defendant is notified of the action and brought under a
7 court’s authority by formal process. *See Murphy Bros.*, 526 U.S. at 347–48.

8 Here, Plaintiffs admit that Defendant was not served pursuant to Nevada Revised Statute
9 §§ 680A.250 or 690A.260. (See Reply 3:24–25 (“There is no case law that says the statute
10 [Nevada Revised Statute §§ 680A.250 or 690A.260] is superior to NRCP [Nevada Rules of
11 Civil Procedure] for serving [an] insurer. Thus, the [Nevada Revised Statute §§ 680] statutes
12 would not govern.”)). Further, because Defendant is a Maryland corporation, (Compl. ¶ 2),
13 Plaintiffs must serve Defendant pursuant to Nevada Revised Statute § 680A.250(3). Therefore,
14 Plaintiff did not properly serve Defendant.

15 Under the *Murphy Brothers* logic, the removal window has not begun until Plaintiffs
16 properly serve Defendant by formal process. Accordingly, Defendant is not yet a party to this
17 action, and Defendant has no standing to remove. Moreover, as Defendant has the burden of
18 disproving the strong presumption against removal jurisdiction, it bears the burden of showing
19 that it was, indeed, served properly in this action. Defendant has shown the contrary.
20 Therefore, because Defendant was improperly served, the Court must remand this action to
21 state court.

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IV. CONCLUSION

IT IS HEREBY ORDERED that Plaintiffs' Motion to Remand, (ECF No. 9), is **GRANTED**.

DATED this 16 day of November, 2016.



Gloria M. Navarro, Chief Judge
United States District Court